



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2004

Mr. John S. Aldridge
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P. O. Box 2156
Austin, Texas 78768

OR2004-3866

Dear Mr. Aldridge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201927.

The Franklin Independent School District (the "district"), which you represent, received two requests from the same requestor for information related to candidates for the position of Superintendent. In her first request, the requestor seeks "the list of six finalists to be interviewed by the Board of Trustees of [the district] for the position of Superintendent" and the criteria used to determine the top six candidates to be interviewed. In her second request, the requestor seeks the names of any candidates interviewed for the superintendent position, information used to determine which candidates would receive interviews, a copy of the superintendent search contract, and names of board members and other individuals present at the review of certain candidates and approval of a single finalist. You state that you have released some responsive information. You also state that you have already provided the requestor with information responsive to her first request, which is also responsive to her second request. *See* Gov't Code § 552.232 (outlining procedures governmental body may follow if governmental body does not wish to release information again in response to repetitious or redundant requests). You also state that you do not have a list of six finalists.¹ You claim that the remaining requested information is excepted from disclosure under

¹We note that the Public Information Act (the "Act") does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request for information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). A governmental body must make a good faith effort to relate a request for information to any responsive information that is within its custody or control. *See* Open Records Decision No. 561 at 8-9 (1990).

sections 552.101 and 552.126 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.126 of the Government Code excepts from required public disclosure “[t]he name of an applicant for the position of superintendent of a public school district[.]” Gov’t Code § 552.126. Section 552.126 provides, however, that “the board of trustees must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of a meeting at which a final action or vote is to be taken on the employment of the person.” *Id.* As of the date of the requestor’s first request, you informed this office that no finalist had been chosen. However, as of the date of her second request, you state a finalist had been chosen, and you have released this name to the requestor. You argue that the identities of non-finalist applicants are excepted under section 552.126. Based on your representations and our review of the information at issue, we agree that the district may withhold the submitted information identifying non-finalist applicants for the superintendent position from the requestor under section 552.126 of the Government Code.³ *Cf.* Open Records Decision No. 540 (1990) (interpreting section 552.123 – which, in similar language to section 552.126, protects identities of applicants for chief executive officer of institution of higher education – as applying to identities, rather than just names of applicants).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

²We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³Because our ruling is dispositive, we need not address your claim of section 552.101 of the Government Code.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID 201927#

Enc. Submitted documents

c: Ms. Dianna Frieda
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(w/o enclosures)